IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 76 OF 2004.
CONNECTED WITH
COMPANY APPLICATION NO. 562 OF 2003.

In the matter of Sections 391 to 394 of the Companies Act, 1956.

AND

In the matter of Scheme of Arrangement and Amalgamation of Jindal Iron & Steel Company Limited, Jindal South West Holdings & Jindal Vijaynagar Steel Limited and thier respective members and creditors.

JINDAL IRON & STEEL COMPANY LTD. ..Petitioner.

Mr. Iqbal Chagla with Mr. Janak Dwarkadas, Mr. D. Khambata, Mr. Virag Tulzapurkar, Mr. Jahangir D. Mistri, Mr. Sanjay Israni i/b M/s. Rajani Associates, Advocate for the Petitioners.

Mr. R. C. Master, Panel Counsel i/b T. C Kaushik for Regional Director, Department of Company Affairs, Maharashtra, Mumbai.

Mr. P. G. Rao, Deputy Official Liquidator.

Mr. Rafiq Dada, Mr. Hiroo Advani, C.K.Bhadha, Leon Samuel, Akshay Patil i/b M/s. Advani & Co., for the Objecting Creditors.

Coram: V.M.KANADE, J.
Date: September 3, 2004.

P.C.

1. Heard the learned counsel appearing on behalf of the petitioner and the learned counsel appearing on behalf of the Intervener and the learned counsel appearing on behalf of the Objecting Creditor and the Official Liquidator.

2. After the Petitioner company approved the scheme of arrangement and amalgamation in November 2003, Company Application was filed under Sections 391 to 394 of the Companies Act, 1956 on December 15, 2003. By order dated December 17, 2003 this Court had directed the Company to hold the meeting of the Equity Shareholders and dispensed with the convening and holding of the meeting of the Creditors of the Petitioner -company. Thereafter the Chairman's Affidavit proving service of notice and publication in the newspapers was filed on January 9, 2004. A meeting of the Equity Shareholders was held on January 27, 2004 and the Report of the Chairman in respect of the meeting of the Equity Shareholders has been filed along with the affidavit on 28th January 2004. Thereafter the present petition has been filed.

3. One of the Creditors of the Company raised an

objection in respect of the said amalgamation. It was contended that the arbitration proceedings are pending in respect of their claim for an amount of Rs.133 crores. This Court by order dated 5th & 7th July 2004, after hearing the parties, had directed a firm of Chartered Accountants to consider the claim of the Objecting Creditor in order to assess whether the scheme can be sanctioned even after considering the claim of the Objecting Creditors. The Chartered Accountant has filed his report.

4. The learned counsel appearing on behalf of the Petitioner company has offered a Bank Guarantee in favour of the Prothonotary & Senior Master, High Court, Bombay for an amount of Rs.133 crores which represents the Principal, Interest and costs claimed by the creditor, namely, Balli Kloeckner GmbH, which is incorporated in Germany towards the claim in the Swedish Arbitration. It is further submitted that the said guarantee shall be unconditional without recourse to the Jindal Vijaynagar Steel Limited, the Amalgamated company and payable on demand upon the production of the authenticated copy of the award in the Swedish arbitration which award is enforceable in India. Both the parties agreed to file

Minutes giving the details of the Bank Guarantee and other modalities regarding the invocation of the bank guarantee and also the discharge of the guarantee under the various circumstances. Both the parties have filed Minutes of the order which are signed by the petitioner - Company and their Counsel as also by the Objecting Creditor and by his Counsel. The same are taken on record and marked "X' for identification. Undertaking given by the petitioner is accepted. I have inquired with Mr. Rafiq Dada, the learned Counsel appearing on behalf of the objecting creditor, whether he has any objection to the sanction of the Scheme. After the minutes of the order are taken on record, he submitted that the terms as stated in the minutes of the order are acceptable to the Objecting Creditor. Since the claim of the Objecting Creditor is secured in view of the Bank Guarantee which is given to the Prothonotary & Senior Master, High Court, Bombay which is in the form of deposit or as an arrangement to secure the amount upon the final declaration of the award pending before the Arbitral Tribunal, I do not see any reason why this Scheme should not be sanctioned. I have perused the report which is submitted by the Chartered Accountant appointed by this Court. As per the said report the net

worth of the amalgamated Company, after sanction of the Scheme, is about Rs 24,375.4 million. The Chartered Accountant has further observed that ICICI Bank, the leading creditor of JISCO, has also given its no objection to the proposed amalgamation of the steel businesses of JISCO and JVSL. The Chartered Accountant has observed that earlier, the claims of Objecting Creditors had not been envisaged and, therefore, direction was given to Chartered Accountant to submit his report. The findings of the report of the Chartered Accountant proceeded on the basis of the claim of the Objecting Creditor amounting to Rs 133 crores and the claim of the Income-tax Department aggregating to Rs 63 crores. In view of the Minutes of the Order being filed in this Court by the petitioner - Company and the Objecting Creditor, the claim of the Objecting Creditor is now taken care of and, therefore, the report of the Chartered Accountant which was based on the claim of the Objecting Creditor, therefore, cannot come in the way of the Scheme being sanctioned. So far as the claim of the Income-tax Department is concerned, the objection raised by the application for intervention filed by the Income-tax Department has already been disposed of by giving separate reasons as to why the said application is

rejected.

5. Regional Director has also filed his report stating, after examining the report received from Registrar of Companies from various points, that the Scheme is not prejudicial to the interest of the creditors and shareholders.

6. The application filed by the Intervener, namely, the Income Tax Department has been rejected as, in my view, they do not have any locus, particularly when the Central Government has given no objection to the scheme of amalgamation.

7. Under the circumstances, the petition is allowed in terms of prayer clause (a) to (n).

8. The Petitioner would pay the cost quantified at Rs.2,500/- each to the Regional Director and Official Liquidator.

9. All concerned to act on an ordinary copy of this order duly authenticated by the Company Registrar of this Court.

(V.M.KANADE,J.)

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